

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No. 1:21-cv-09562-PKC

BRIAN DONNELLY AKA KAWS and
KAWS INC.,

Plaintiffs,

**DECLARATION IN SUPPORT OF
REQUEST FOR CERTIFICATE
OF DEFAULT**

-against-

JONATHAN ANAND, both individually and doing
business as HOMELESS PENTHOUSE,
PENTHOUSE THEORY, HIDEOUT.NYC,
INCOGNITO and YOUNG NEON, DAVID KANG,
DYLAN JOVAN LEONG YI ZHI,
THE PENTHOUSE THEORY,
THE PENTHOUSE COLLECTIVE and
OSELL DINODIRECT CHINA LIMITED,

Defendants.

-----X

NEHEMIAH S. GLANC hereby declares as follows:

1. I am associated with Aaron Richard Golub, Esquire, P.C., attorneys for Plaintiffs BRIAN DONNELLY AKA KAWS and KAWS INC., and as such am familiar with the facts and circumstances herein. I submit this Declaration in support of Plaintiffs' application for a Clerk's Certificate of Default concerning Defendants DYLAN JOVAN LEONG YI ZHI, THE PENTHOUSE THEORY, and THE PENTHOUSE COLLECTIVE.

2. This action was commenced on November 18, 2021 pursuant to 15 U.S.C. § 1121, 28 U.S.C. § 1331 and 28 U.S.C. § 1338 (Dkt. # 1).

3. The time for defendants DYLAN JOVAN LEONG YI ZHI, THE PENTHOUSE THEORY, and THE PENTHOUSE COLLECTIVE to answer the Complaint herein or has expired.

4. On February 15, 2022, Defendants DYLAN JOVAN LEONG YI ZHI, THE PENTHOUSE THEORY, and THE PENTHOUSE COLLECTIVE moved to dismiss the Complaint (Dkt. # 41). On September 22, 2022, the Court denied the Defendants' DYLAN JOVAN LEONG YI ZHI, THE PENTHOUSE THEORY and THE PENTHOUSE COLLECTIVE's motion to dismiss (Dkt. # 85).¹

5. On October 17, 2022, counsel for Defendants DYLAN JOVAN LEONG YI ZHI, THE PENTHOUSE THEORY and THE PENTHOUSE COLLECTIVE moved to withdraw as counsel (Dkt. #89). On November 14, 2022, the court granted the motion to withdraw as counsel (Dkt. # 91) and Ordered, inter alia, the following (Dkt. # 91 pp. 1-2):

“The Court will conduct a case management conference for all defendants, including Dylan Jovan Leong Yi Zhi, The Penthouse Theory, The Penthouse Collective and Jonathan Anand, on January 17, 2023 at 2:00 p.m. in Courtroom 11D, U.S. Courthouse, 500 Pearl Street, New York, NY.

DEFENDANT THE PENTHOUSE THEORY AND THE PENTHOUSE COLLECTIVE APPEAR TO BE ENTITIES AND NOT NATURAL PERSONS AND THEREFORE ARE NOT PERMITTED TO APPEAR IN THIS COURT, EXCEPT THROUGH AN ATTORNEY WHO IS ADMITTED TO PRACTICE IN THIS COURT. DEFENDANTS THE PENTHOUSE THEORY AND THE PENTHOUSE COLLECTIVE SHALL CAUSE A NOTICE OF APPEARANCE TO BE FILED BY AN ATTORNEY ADMITTED TO PRACTICE IN THIS COURT ON OR BEFORE JANUARY 4, 2023 AND SAID ATTORNEY SHALL APPEAR AT THE JANUARY 17, 2023 2:00 P.M. HEARING. FAILURE TO COMPLY WILL RESULT IN STRIKING THE NON-APPEARING DEFENDANT'S ANSWER AND THE ENTRY OF A DEFAULT JUDGMENT AGAINST IT.

DYLAN JOVAN LEONG YI ZHI SHALL APPEAR AT THE JANUARY 17, 2023, 2 P.M. CONFERENCE IN PERSON OR BY AN ATTORNEY ADMITTED TO PRACTICE BEFORE THIS COURT. FAILURE TO COMPLY WILL RESULT IN STRIKING DYLAN JOVAN

¹ It is for this reason that I struck the clause “or otherwise moved with respect to the complaint herein” in the accompanying Clerk's Certificate Of Default.

LEONG YI ZHI'S ANSWER AND THE ENTRY OF A DEFAULT JUDGMENT AGAINST HIM.” (emphasis and CAPS in original) (Dkt. #91 pp. 1-2).

6. On January 13, 2023, the Court issued an Order (Dkt. # 93), which ordered, inter alia, the following (Dkt. # 93 p. 2):

“At 1:06 p.m. today, the last business day before the conference, Leong has sent an email to the Court¹ seeking an adjournment. He alternatively seeks a telephone conference. He now claims that he cannot attend in person because he is a student living in Singapore without resources to fly to New York. Leong, who notes that he is 9521 miles away, most certainly knew prior to today that he had absolutely no plans to come to New York no matter how the Court ruled.

Leong subscribes his email with his name and that of The Penthouse Theory and The Penthouse Collective, the two apparent entities. To the extent the entities seek an adjournment, they are not represented, and the request is DENIED.

With respect to Leong, his application to adjourn is also DENIED but he may participate by telephone. Dial-In No: 1-888-363-4749, Access Code: 3667981.” (Dkt. # 93 p. 2).

7. On January 17, 2023, the Court held a Civil Case Management conference which was attended by Defendants DYLAN JOVAN LEONG YI ZHI, THE PENTHOUSE THEORY and THE PENTHOUSE COLLECTIVE, via telephone (see Ex. 1). The Court ruled, inter alia, concerning Defendants DYLAN JOVAN LEONG YI ZHI, THE PENTHOUSE THEORY and THE PENTHOUSE COLLECTIVE, the following (Ex. 1 pp. 9 and 14):

“So the plaintiff is free to move for a default judgment.” (Ex. 1 p. 9) and

“Plaintiffs shall file a motion for a default judgment within 30 days. So you have 30 days to do that. And hopefully and ideally, Mr. Leong will be able to settle this case with the plaintiffs. And otherwise, the plaintiffs will have to proceed with their motion for default judgment within 30 days of today.” (Ex. 1 p. 14).

8. On January 17, 2023, the Court issued a Civil Case Management Plan And

Scheduling Order (Dkt. # 94), which ordered in paragraph 14 thereof, the following (Dkt. #94 p. 3):

“Plaintiff shall file motion for a default judgment within 30 days.” (Dkt. # 94 p. 3).

9. The Defendants DYLAN JOVAN LEONG YI ZHI, THE PENTHOUSE THEORY and THE PENTHOUSE COLLECTIVE’s time to answer the Complaint has not been extended.

10. The Defendant DYLAN JOVAN LEONG YI ZHI is not an infant or incompetent. Defendant DYLAN JOVAN LEONG YI ZHI is not presently in the military service of the United States as appears from facts in this litigation. Defendants THE PENTHOUSE THEORY and THE PENTHOUSE COLLECTIVE are not natural persons.

WHEREFORE, plaintiffs BRIAN DONNELLY AKA KAWS and KAWS INC., request that the default of defendants DYLAN JOVAN LEONG YI ZHI, THE PENTHOUSE THEORY and THE PENTHOUSE COLLECTIVE be noted and a certificate of default issued.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge, information and belief.

Executed this 26th day of January, 2023 in New York, New York.

s/Nehemiah S. Glanc
NEHEMIAH S. GLANC
NSG 7264
nglanc@argolub.com

AARON RICHARD GOLUB, ESQUIRE, P.C.
Attorneys for Plaintiffs
24 East 64th Street, Fifth Floor
New York, New York 10065
ph: 212-838-4811
fx: 212-838-4869

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X Civil Action No. 1:21-cv-09562-PKC

BRIAN DONNELLY AKA KAWS and
KAWS INC.,

Plaintiffs,

**REQUEST FOR CLERK'S
CERTIFICATE OF DEFAULT**

-against-

JONATHAN ANAND, both individually and doing
business as HOMELESS PENTHOUSE,
PENTHOUSE THEORY, HIDEOUT.NYC,
INCOGNITO and YOUNG NEON, DAVID KANG,
DYLAN JOVAN LEONG YI ZHI,
THE PENTHOUSE THEORY,
THE PENTHOUSE COLLECTIVE and
OSELL DINODIRECT CHINA LIMITED,

Defendants.

-----X

NEHEMIAH S. GLANC hereby declares as follows:

1. Pursuant to Fed. R. Civ. P. 55(a) and L.R. 55.1, Plaintiffs BRIAN DONNELLY
AKA KAWS and KAWS INC. request a Clerk's certificate of entry of default. Within in an
accompanying Declaration, I affirm that the parties against whom the judgment is sought:

- i. Are not infants or incompetent persons;
- ii. Are not in the military service;
- iii. Were properly served under Fed. R. C. P. 4 and proof of service having
been filed with the Court; and
- iv. Have defaulted in appearance in the above captioned action.

I declare under penalty of perjury that the foregoing is true and accurate to the best of my
knowledge, information and belief.

Executed this 26th day of January, 2023 in New York, New York.

s/Nehemiah S. Glanc
NEHEMIAH S. GLANC
NSG 7264
nglanc@argolub.com

AARON RICHARD GOLUB, ESQUIRE, P.C.
Attorneys for Plaintiffs
24 East 64th Street, Fifth Floor
New York, New York 10065
ph: 212-838-4811
fx: 212-838-4869